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In re Application of	:	
SMITH	:	
Application No.: 10/538,589	:	DECISION
PCT No.: PCT/US03/41391	:	
Int. Filing Date: 22 December 2003	:	
Priority Date: 20 December 2002	:	
Attorney's Docket No.: 112981.125US1	:	
For: COATED PARTICLES FOR SUSTAINED-	:	
RELEASE PHARMACEUTICAL ADMINISTRATION	:	

This decision is in response to applicant's submission filed on 15 June 2005 in the United States Patent and Trademark Office (USPTO).

#### **BACKGROUND**

On 22 December 2003, applicants filed international application PCT/US03/41391, which designated the U.S. and claimed a priority date of 20 December 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 15 July 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 20 June 2005.

On 15 June 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, an assertion of small entity status, an Application Data Sheet, and the a "PETITION TO CORRECT PRIORITY UNDER 37 C.F.R. § 1.182".

#### **DISCUSSION**

The petition indicates that provisional application serial number 60/435,448 was incorrectly listed as serial number 60/435,488 in international application number PCT/US03/41391. The petition also indicates that applicant has included the correct priority claim to provisional application serial number 60/435,448 in the accompanying Application Data Sheet. The petition under 37 CFR 1.182 was filed to correct this priority claim.

A petition under 37 CFR 1.182 is not necessary in the instant situation. Either applicant complies with 37 CFR 1.78(a)(5) or applicant does not. If applicant complies, no petition is

necessary. If applicant does not comply, a petition under 37 CFR 1.78(a)(6) is required. The petition fee has not been charged.

In the instant situation, applicant has failed to comply with 37 CFR 1.78(a)(5). Although the Application Data Sheet with the purported correct priority claim was filed within four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f), the application does not in fact include the correct priority claim. Applicant may file a petition under 37 CFR 1.78(a)(6) along with a new Application Data Sheet to correct the incorrect priority claim number.

### **CONCLUSION**

For the reasons set forth above, the petition under 37 CFR 1.182 is **DISMISSED** as **MOOT**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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